

JUN 27 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,**

Plaintiff - Appellant/Appellee,

v.

WELLS FARGO BANK, NA,

Defendant - Appellee/Appellant.

**Nos. 04-56414, 04-56489,
05-55694**

D.C. No. CV-03-670-JVS

MEMORANDUM*

**Appeal from United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding**

Submitted June 8, 2006
Pasadena, California**

**Before: KOZINSKI and GOULD, Circuit Judges, and MARTINEZ, District
Judge.*****

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Ricardo S. Martinez, District Judge for the Western District of Washington, sitting by designation.

This Court does not have jurisdiction over these consolidated appeals because National Union failed to file a timely notice of appeal. *Tillman v. Ass'n of Apartment Owners*, 234 F.3d 1087, 1089 (9th Cir. 2000). In a well-reasoned order, the district court denied National Union's motion to enlarge the time to file its appeal; therefore, the notice of appeal was untimely.

National Union has waived its right to present its arguments in opposition to the district court's denial of its motion to enlarge the time to file a notice of appeal because it failed to raise any such arguments in its opening brief. This Court "will not ordinarily consider matters on appeal that are not specifically and distinctly argued in appellant's opening brief." *United States v. Ullah*, 976 F.2d 509, 514 (9th Cir. 1992) (quoting *Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986)).

National Union argues that the language of this Court's order denying Wells Fargo's prior motion to dismiss without prejudice to its renewing the jurisdiction issue "in the consolidated answering brief" led it to believe that the jurisdiction issue had been resolved in its favor, and, therefore, it did not raise the issue in its opening brief. We reject that argument. There would have been no reason to consolidate National Union's first appeal from the denial of its motion for judgment as a matter of law with its second appeal from the district court's order

denying its motion to enlarge the appeal time if the jurisdictional argument pertaining to the second appeal had been resolved.

DISMISSED.